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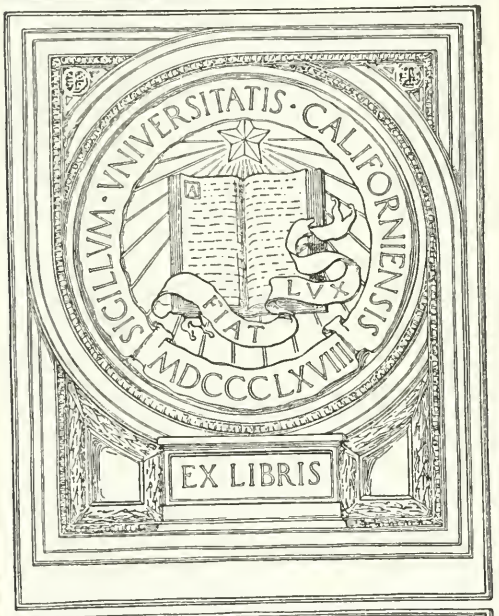

ROBERT ERNEST COWAN

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William Denman

CHINESE CREWS AND THE WRECKING OF THE "RIO."

No. 12368.

IN THE

District Court of the United States

IN AND FOR THE

NORTHERN DISTRICT OF CALIFORNIA.

IN ADMIRALTY.

In the Matter of the Petition of the

PACIFIC MAIL STEAMSHIP COMPANY,

Owners of the American Steamship "City of Rio de Janeiro," for Limitation of Liability

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ARGUMENT OF WILLIAM DENMAN, FOR THE CLAIMANTS

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Point Lobos. Rio's anchorage (7 miles to Fort). Point Bonita (2 miles to Fort). The Gate. Fort Point.

The Outer Bay looking North. Points Lobos and Bonita (the "Heads") on the West, and Fort Point and the Gate on the East.

IN THE MATTER OF THE PETITION OF THE PACIFIC MAIL STEAMSHIP COMPANY, OWNER OF THE STEAMSHIP "RIO DE JANEIRO," FOR LIMITATION OF LIABILITY.

No. 12368
January 20, 1903.

Argument of William Denman for the Claimants.

FIRST ISSUE.

THE NEGLIGENCE IN BRINGING IN THE SHIP IN THE FOG AND DARKNESS, IN THE EBB TIDE AND THE FRESHET WATER.

There are two distinct and separate issues in this case. The first is, "Is the petitioner liable for the loss of life and baggage in this disaster?" The second is, "Can the petitioner limit its liability to the value of the ship and the freight pending?"

The first issue is that of the ordinary damage suit for loss of life by the negligent wrecking of a ship carrying passengers at sea. The second is something entirely different and arises

from an extraordinary relief given to ship owners under certain circumstances by a United States statute. In the discussion of the first issue we shall confine ourselves to the negligence of those in control of the ship in bringing the Rio into the Golden Gate, under the conditions of darkness, of a heavy fog, of a strong ebb tide, of winter freshets, and of known insufficient marking of threatening rocks.

Under the second we will show from the evidence that the owners themselves, by failing to comply with a United States statute regulating passenger carriers at sea, actually participated in the negligence which occasioned the deaths by which our claimants have been injured.

Judging from awards made by this Court in similar cases, the claimants can show damage amounting to somewhere between $55,000 and $60,000. The fund in the registry amounts to about $25,000 with interest.

In support of our first issue we shall confine ourselves to the testimony of the petitioner's prize witness, the pilot Jordan.

From his testimony it appears that the "City of Rio de Janeiro," engaged in carriage of passengers by sea and having on board 211 souls, arrived off the coast of California on the afternoon of February 21, 1901. As is quite customary at this sea-

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son of the year, the coast was fog bound and the vessel came to anchor outside this port near the thirteen-fathom buoy, which is about a mile outside the heads and three and a half miles distant from the Golden Gate. The night continued foggy, he says, at least until 9 o'clock, when he retired.

At a few minutes before 4 on the following morning the pilot was called and went on deck. At that time, according to his testimony (p. 11), the weather was clear IN PLACES.

He was able to see the Point Bonita light, at the northwest head of the outer bay, nearly ahead; the lights on Point Lobos, the south head, lay on his starboard quarter, but he could not see the Fort Point light, which lies between the two heads and at the eastern end of the outer bay, two and a half miles distant, and at the western end of the Golden Gate. He could see the bank of fog lying in the inner bay and coming down to the mouth of the gate itself and obscuring the Fort Point light. The tide was ebbing, as is indicated from the position of the ship as she lay at anchor. It had been raining and it was the season of spring freshets, which, coming down from the watersheds of the San Joaquin and Sacramento, re-enforce the returning tide of the bay with a furious current. The almanac shows that the sun rose on that day at 6:40, so that it was now over two and three-

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quarter hours before sunrise and quite dark—how dark can best be determined from the fact that an hour later, when the ship sank, it was impossible to distinguish Chinese from white men across the deck. There was no moon, so we can assume that at the time the pilot came on deck it was as dark as it could be.

It was under these conditions that the conversation took place between Captain Ward and the Pilot regarding the bringing in of the ship. Looking at the trial of this case from its dramatic standpoint—and every young attorney who loves his profession necessarily must—I feel the keenest regret that I was unable to bring out on the stand here the exact words that were then spoken. The deliberation seems to have lasted from 4 o'clock until 4:35, when the ship finally started ahead; and in the desultory debate of those thirty-five minutes hung in the balance the lives of one hundred and twenty-seven human beings. For some reason not given, the pilot is unable to tell us any of the sentences that passed between them. It is not for us here to fix the blame on one or the other of these two; other tribunals have that jurisdiction. From the testimony of the pilot, they both finally agreed that they would make an attempt to enter that narrow tidal river which, in a metaphor only too grimly true for the poor souls below in their bunks, had been named the Golden Gate.

At 4:25, according to Mr. McAllister's statement, the anchor was hove short, and then for ten minutes longer, while the ship was drifting in the tide, this same debate continued, until at 4:35 the captain gave the order, "Let her go." Now, what was it that made them hesitate for those ten minutes after they had hauled up the slack of their anchor chain? Let us try to picture something of what was passing through the minds of these men to whom were entrusted the lives of all those passengers.

In the first place, there was the Golden Gate itself, a narrow channel through which they must steer by a course that lay less than a quarter of a mile from the sunken rocks that hedge its southern shore. So short is the distance between the high bluffs on each side of the channel that once in it, in the pilot's own words, he could not "in any safety" turn back to his anchorage. It might be done in clear weather, he says, but not in a fog. Once inside they knew they must go ahead.

In the second place, there is the great depth of water inside the heads—so deep that you could not sound for the bottom and thus determine the location of the ship without stopping and drifting with the tide. In the pilot's own words, you could not sound, because "you would have to stop the ship, and then the ship would have been in dan-

ger—more danger than going ahead." Once inside the heads, they knew that they must run for two and a half miles where it was impossible to get any bearings, save from the fog horns, whose clamorous echoes in the high cliffs running down from Mount Tamalpais are most deceitful.

In the third place, the sunken rocks inside the heads are so dangerous that they are supposed to be marked with bell buoys. Mile Rock has such a buoy, but in the language of the pilot, "you never can hear it over probably 100 yards or so." And this further menace must have gone through his mind in those ten minutes of hesitation.

In the fourth place, there was the darkness of a moonless night. Fog in the day is bad enough, but at night one could not even discern the cliffs that overhang the entrance of the Gate. In the daylight these cliffs loom up through the fog for quite a distance, and in a general way may indicate the course of the channel; but now it was absolute darkness. Did they think of this also as they drifted those ten minutes in the tide? That will never be known, but if they failed to consider it, that failure also constituted negligence.

In the fifth place, there was the ebbing tide, pouring through this narrow channel not only the returning waters of the entire bay of San Francisco, but also the spring freshets of the Sierras and the

Coast Range, collected from the great watersheds of the Sacramento and San Joaquin Valley, over 25,000 square miles in extent. This enormous body of water rushes out of the Golden Gate into the outer bay formed by Point Lobos and Point Bonita, and eddies and swirls in currents and cross-currents of every conceivable character, just as in the pool at the foot of a river cascade. Only here the forces at play are so tremendous that this iron ship, sinking to the bottom of the outer bay, was dragged along the floor of the sea so far from the point of her wrecking that the most diligent soundings and diving for several miles around have failed to locate her.

In the sixth place, and most important of all, the deterring influences that caused that half hour of debate and hesitation on the part of the captain and pilot was the land fog—"thick like steam," to use the pilot's language—which hung in a great bank over the inner bay, covering the Fort Point light, but not reaching quite out to the heads. Says the pilot, "I hesitated because I thought possibly this fog might come out. Sometimes it does, sometimes it only reaches down to the heads, sometimes it comes out altogether." The captain thought it would clear up by daylight, as this was often the case, and the pilot agreed with him.

Was it any wonder they hesitated to take these

211 human beings into that tidal canon, so narrow that once in they cannot turn back if there is a fog; so deep that they must stop the ship to take soundings; in an ebb tide and freshet water so swift and with such cross-currents that it was more dangerous to stop and take soundings than it was to go ahead in the fog without them; where they must pass sunken rocks of which the tinkle of the bell buoys gave no warning beyond a hundred yards—and all in the darkness of a moonless night? The wonder to my mind is that the Pacific Mail Steamship Company, bidding for the passenger traffic of the Pacific Ocean, dares appear in open court and claim that it was proper seamanship to even consider bringing the ship in under these circumstances.

Why! it was negligence to risk the fog in that narrow channel at any time, and tenfold indefensible in view of the likelihood of the fog—a land fog—dissipating with the sunrise. It was greater negligence to bring her in, in the fog and darkness combined; for if the sunrise did not dissipate the fog, it would at least have caused the Marin hills to loom up in it and have given some notion of where they were. But most monstrously negligent of all was the attempt to find that narrow opening in the fog and darkness, in the ebb tide and freshet water with its eddies and cross-currents, when by

waiting less than four hours till slack water, between the tides, they would have had a good forty-five minutes, when the current is absolutely stilled, to run the four miles that would have taken them from their anchorage through the Gate and into the inner bay.

Leaving aside entirely the question whether or not it was negligence to leave their safe anchorage and to attempt to nose into the Gate before the fog caught them, their negligence was established beyond the slightest question when they continued their course after running into the fog some two and a half miles from the entrance to the Gate. Then the very thing had occurred which the pilot by his own testimony admits had caused him to hesitate even after he had hove his anchor up short. The fog had come out of the harbor. His testimony is that he encountered it when the ship was just about abreast of Point Bonita Lighthouse, which lies in an air line about two and a half miles from the rock by the Fort on which they were wrecked. Two and a half miles in air line we must note, because at that time the ebb tide carried with it a current which could not have been less than five or six miles an hour. This meant that to reach the rock just off of Fort Point, on which they were finally wrecked, they must travel over four miles of water.

Now, it cannot be for a moment contended that

this fog came on the pilot suddenly, dropped down from a clear sky as it were, and caught him in this trap before he could retreat, for he stated here on the stand before your Honor that he ran for half a mile in the fog before it became too thick for him to go about and steam to his safe anchorage. Apparently he said to himself, "I have taken the chances up to this point and I might just as well risk the whole game." Whatever may have been in his mind, however, he took the chances and if there had been any doubt or any question of his negligence up to this point, it becomes fixed upon him from the moment that he continued on his course after he ran into the fog bank which had obscured the Fort Point light.

And what was that course? Without burdening the Court with the consideration of the details of steering on that morning, it is sufficient to say that the course the pilot had chosen carried him within a quarter of a mile of the rock on which he was wrecked. He entered the fog at a point two and a half miles in an air line and four miles of water travel distant from that rock. This means that, if in traveling in the fog, guided only by the treacherous signals of the fog horns reverberating in the Marin hills, he should be carried out of his course by the conflicting and whirling currents of this ebb tide a distance to the south of but one-sixteenth of the distance to be travelled to the

Gate, he must of necessity wreck his ship. The course chosen was negligent in itself, and it becomes a matter of indifference from this standpoint whether or not the gate were a mile or twenty miles wide.

They did go ahead in the fog; they were swung off of their course a quarter of a mile in those four miles. They did strike on a sunken rock, whether or not one of those protected by the bell buoy that did not ring does not appear. The ship was wrecked and has never been found. One hundred and twenty-seven people were drowned. The very thing that they feared would happen as the ship swung in the tide or drifted in it a mile there outside of the heads, did happen. They took their chances, played in poor luck, and incidentally drowned one hundred and twenty-seven people.

I am now going to read, your Honor, in closing my argument on this first issue in the case, a few excerpts from the testimony of Pilot Jordan, which bear out, to the smallest detail, the statements I have just made to you:

p. 11.

Q. How was the weather when you were called?
A. It was clear, CLEAR IN PLACES. * * *

pp. 23-24.

Q. Was there any condition existing, any climatic condition at that time, or any geological condition existing at that time, that would change the current?
A. Outside the heads?

Q. Inside. A. There had been heavy rains, that caused the rivers to rise and caused freshets.

Q. This was in February, 1901? A. Yes, sir.

Q. How long had it been raining before the disaster occurred?

A. We had very little rain outside where I was. I do not know how long it had been raining inside.

Q. Had it been raining outside? A. Very little.

Q. For how long? A. It had been raining one day I think.

Q. At this season of the year, is it unusual to have a large flow of fresh water supplementing the tides of the bay and coming out the Gate?

A. It is not unusual to have a little extra, more than there is in the summer months.

Q. Is it unusual to have at various and intermittent periods during the winter large quantities of fresh water supplementing the flow out of the Gates? A. Well, more or less.

Q. That is liable to happen at any time during the winter?

A. Well, more or less, but not as strong as I found it at that time.

Q. It is a thing that is likely to happen at any time during the winter months? A. Of course, the more rain, the more current.

p. 11.

Q. You say you started to get under way. Did you stop?

A. Yes, I had her hove short and then stopped.

Q. Then what happened?

A. I stopped because I saw the fog in the bay. Daybreak came and I could see the fog up the bay and I stopped for a few minutes, and then hove up again and started. * * *

p. 20.

Q. WHY DID YOU HESITATE after hauling up the anchor. part way before going ahead?

A. I THOUGHT POSSIBLY THIS FOG MIGHT COME OUT.

Q. What did you say to the Captain about the fog coming out?

A. I think I told him the fog was liable to come out, the bay fog.

Q. Was that a likely thing?

A. Sometimes it does; sometimes, sometimes it only reaches down to the heads; other times it comes out altogether.

Q. Is this land fog thicker, or less thick, than the ordinary sea fog?

A. Sometimes it is a white fog, something like steam, and it is harder to see through than a regular sea fog.

Q. And you warned the Captain that this thick fog was likely to come out of the bay—what did he say to you then?

A. I told him it might come out. He thought it would clear up by daylight and I thought so myself. * * *
Q. But you didn't wait until daylight?
A. It was daybreak when we came in.
Q. It was clearing up then?
A. No, sir; it shut down afterwards when we got in between the heads, but all of this time you could see land. * * *

p. 13.

Q. Did the fog shut down on you very heavy?
A. It shut down very heavy when we got down in the narrow part. * * *

p. 7.

Q. Captain; this fog that you met as you came in, was it a land fog or a sea fog?
A. It was a land fog. It came out of the bay. We had a sea fog the night before. * * *

p. 26.

Q. This point you now indicate is about on a direct line between Point Lobos and Point Bonita? A. Yes, sir.
Q. How far from Fort Point when you struck?
A. About 2½ miles.
Q. At that time the fog began to settle down?
A. Yes, sir; we began to get into the fog some. We did not get in a real dense fog until we got further along. * * *

p. 27.

Q. YOU PROCEEDED HALF A MILE IN THE FOG WHEN YOU COULD HAVE TURNED AROUND AND GONE BACK TO YOUR ANCHORAGE?
A. YES, SIR. IF I SAW ANY NECESSITY FOR IT. * * *

p. 12.

Q. At that time after you had been running about fifteen minutes from your anchorage in thirteen fathoms, in what depth of water were you, after a run of fifteen minutes?
A. About twenty-five or thirty fathoms, maybe.
Q. Could you anchor with any safety in thirty fathoms?
A. No. Well, it could have been done in case of necessity, but I did not see any occasion to anchor. IT WOULD HAVE BEEN DANGEROUS TO HAVE ANCHORED THERE IN THAT TIDEWAY. * * *

p. 24.

Q. After you got in the fog what soundings did you take?
A. Did not sound at all. * * *

p. 25.

Q. So that on this foggy morning, you were coming into the harbor of San Francisco on a course that was only a quarter of a mile from a rock on which you might have been wrecked, at a season of the year when heavy freshets are likely to reinforce the returning tide of the bay, and you were proceeding in that fog without taking soundings, is that true?

A. Yes, sir. It would have done no good to take soundings. You could not have got bottom at any kind of length there.

Q. How do you know?

A. Because you would have had to stop the ship, and then the ship would have been in danger, MORE DANGER THAN IN GOING AHEAD.

Q. Could you not have turned about and gone back to your anchorage?

A. Not with any safety after we once got inside the Golden Gate.

Q. You could not have done that? A. No, sir; not in safety.

Q. Why would it not be safe?

A. Because the place is narrow. You might do it in clear weather but not in fog.

SECOND OFFICER COGHLAN (p. 39 of Record).

Q. You say it would take about three-quarters of an hour for the ship to proceed from the point where she raised anchor to the point where she was wrecked? A. Yes, sir.

Q. And that she ran into the fog about twelve or fifteen minutes after she started? A. About that.

Q. How far was this from the point where she struck.

A. About 2½ miles, I should judge, or maybe a little more than that.

Q. You say that the Rio minded her helm well?

A. Very well.

Q. Could you have come about in 2½ miles and gone back to a safe anchorage if the Captain had so desired?

A. You mean would it have been possible?

Q. Yes.

A. In clear weather it would have been possible; yes, sir.

Q. Would it have been possible under the weather conditions as they were?

A. It would have been possible; yes, sir; it is just as possible in the fog as it would be in clear weather.

The ship is liable for injuries caused by the negligence of a pilot, even though compelled to accept him by a State or Federal Statute.

In the case of the *China,* 7 Wallace, 53, the injury complained of arose from the negligence of a pilot which the ship was compelled to employ under a statute of the State of New York similar in its nature to that of California. It was held that the ship was liable for the damages, although the negligence was not participated in by any other member of the crew.

In *Sherlock* vs. *Allen,* Administrator, 93 U. S. 105, the owners were held liable for the negligence of a pilot which they were compelled to take by Statute, the negligence causing the death of defendant's intestate.

The law has been recently summarized and authorities collected in the recent case of *Homer Ramsdell Company* vs. *La Com. Gen. Trans-Atlantique,* 182 U. S. 406, in which it is held that the ship is liable in Admiralty and probably the owners also, though the owners are not liable at common law, where they are compelled to employ the pilot.

SECOND ISSUE.

THE INSUFFICIENCY OF THE CHINESE CREW FURNISHED BY THE OWNERS, WHICH DEFEATS THEIR APPLICATION TO LIMIT THEIR LIABILITY.

We now approach the second issue raised by the pleadings in this case, which is, "Can the petitioner avail itself of the Statute of Congress to limit its liability, which would amount to some $55,000.00 or $60,000.00 on the claims which have been filed here, to the sum of $25,000.00, or thereabouts, constituting the value of the ship after she was wrecked, and the freight pending?"

On this issue the petitioner is the moving party and necessarily on him falls the burden of proof. This Statute of Congress affords an extraordinary remedy whereby the ship owner may escape his liability for the negligence of his servants by payment of a very insignificant sum. It is a statutory remedy and hence must be strictly construed against the party desiring to avail himself of it.

Were there any doubt at all about the burden of proof falling on petitioner that doubt would be dispelled when we consider that by the practice of insurance, which was in vogue at the time that the Statute was passed, the ship owner is enabled by insuring his vessel and the freight pending

to escape scot free from any liability at all for damages arising from the total loss of his ship by the negligence of his servants. The Courts have uniformly held that the ship owner may retain his insurance for the ship and the freight pending; all he is compelled to stipulate for is the value of the ship *after the wreck,* which is nominal, and the freight pending for the voyage. As a result of this Statute the unscrupulous owner is able to say to his captains, "Of course you are to use every care to protect your passengers, and you are not to take unnecessary risks in bringing in your ship, but of course you understand that if you do take risks and the ship is completely wrecked and the passengers are drowned, we lose absolutely nothing, for we may retain all the insurance money for the vessel and we are compelled to pay by way of damages only the insurance money for the pending freight. Do not take chances on bringing your ship in, but remember that the more voyages made a year the greater the dividends of the company. True, there is a risk of loss of life, but there is no risk of loss of money, though the ship be absolutely lost by your negligence." I repeat that when we consider the power that this Statute places in the hands of ship owners to escape their liability, there cannot be the slightest doubt that upon them

must be the burden of proving that they have complied with the requirements of the Statute.

Now, the Revised Statute of the United States, Section 4463, provides that "No steamer carrying passengers shall depart from any port unless she shall have in her service a full complement of licensed officers AND FULL CREW, SUFFICIENT AT ALL TIMES TO MANAGE THE VESSEL, including the proper number of watchmen."

In order to limit his liability the petitioner has resting upon him the burden of proving that the "damage or injury done, occasioned or incurred" shall be done "without the privity or knowledge of such owner or owners" (U. S. R. S., 4283).

The issue presented by the pleadings in this case denies that the petitioner complied with 4463 R. S. above mentioned, as is set forth in paragraphs VI, VII, VIII, IX and X of the answers of the Estate of Henshall, the Estate of Dodd and the Estate of Guyon.

In paragraphs VII and VIII, the sufficiency of the crew is denied in the following language:

"That at no time subsequent to the 10th day of December, 1900, did petitioner provide the said steamship so engaged as a common carrier of passengers by sea, with a full crew, sufficient at all times to manage the vessel, but that the crew pro-

vided by petitioner was insufficient in this, that all the members of said crew comprising the sailors of her deck department, the firemen and the coal passers were Chinamen, and, saving only the boatswain and the first fireman, were unable to speak or understand any European language, or any language spoken by the officers of the said steamship, and that the officers of the said steamship were none of them able to speak any language intelligible to the said Chinamen, and that the only course which the said Chinamen could receive orders from the said officers was through the two Chinamen above mentioned, to-wit, the boatswain and the first fireman; and that the only persons on the said steamship who were conversant with the lowering of her life boats, and who understood both the language of her officers and of her said Chinese crew, were the said boatswain and first fireman.

"That there were upon the said steamship, at all times subsequent to the 10th day of December, 1900, and at the time of her wreck and foundering hereinafter set forth, eleven life boats, and that the number of persons on the said steamship at the time of said foundering was more than two hundred and ten; and that it was necessary to lower all the said life boats to carry safely from the said steamship all the said persons, and that

the said Chinese were necessary to properly lower and man the said life boats and place the passengers therein at such time as the wrecking and foundering of said steamship as hereinafter described, and that at no time within one year prior to the wreck of said vessel had there been a drill in the lowering of the said life boats from the said steamship, and that at the time of her wreck and foundering there were but eighteen members of the crew, to-wit, the members of the deck department, who had at any time within a year prior thereto lowered or assisted in lowering any life boats from the side of said steamship."

Some question may be raised as to whether or not the word "sufficient" appearing in Section 4463 of the R. S. means anything more than that the owner shall supply a crew sufficient IN NUMBER to man the ship. Such an interpretation was suggested to me by one of the older practitioners in the State Courts as a conceivable one. In Admiralty, however, we find that the word "sufficient" is used universally as including many qualifications other than mere number, and its juxtaposition to the word "full" shows that those other qualifications are intended to be designated. A crew must not only be full in number but sufficient in experience and other qualifications at all times to manage the ship. We find on examining the English and American Admiralty decisions that

the ship itself is repeatedly spoken of as "sufficient" in the sense of being efficient for the purpose of the voyage. Judge Seawell says, in *Kimball* vs. *Tucker,* 10 Mass., 195, "If a vessel SUFFICIENT at the commencement of the voyage is entirely lost," etc.

Judge Clifford, in *The Lady Pike,* 21 Wallace, 13 and 14, says, "Applied exclusively to the number of steamer's company, the complaint contained in the first assignment of errors would not be well founded, as the crew was sufficient IN NUMBER, and the proof shows that the steamer had on board two pilots and two master mariners; but the gravamen of the complaint is that neither the master in charge of the deck nor the pilot had any SUFFICIENT knowledge of the craft under their command, nor of the dangers of the navigation in passing down the river," etc. This case, which cites many authorities, decides that from lack of this knowledge of the craft and of the dangers to be encountered, the crew was insufficient.

The duty to properly man the ship of course exists entirely apart from any statutory requirements; and proper manning consists in much more than the mere placing of a large enough number of men on board the ship to handle her. The men must be fitted for the service, and this duty rests on the owners even in a foreign port. We find in *The Gentlemen,* Olcott 115, that the

owners were held liable for furnishing an inadequate crew, which they shipped at the Gambia river, West Africa, large enough in numbers but sick with fever.

Where a captain did not know the coast and entered the enemies' port and was captured, it was held that the vessel was "incompetently fitted out" because there was no proper master for the purpose of the voyage. *Tait* vs. *Levy,* 14 East., 482.

In the *G. H. Ross,* 111 Federal 208, the Circuit Court of Appeals for this circuit held that where the owners appointed an incompetent superintendent to manage ships in Alaska, they could not limit their liability from loss arising from sending out a barge at the wrong time of the year.

Judge Hawley has said, in the case of *In re Meyer,* 74 Federal, 885, "It is the duty of the owners of a steamer carrying goods and passengers not only to provide a seaworthy vessel, but they must also provide a crew ADEQUATE IN NUMBERS AND COMPETENT FOR THEIR DUTIES with reference to all the exigencies of the intended route."

There is a further point of law that I desire to call at this time to the attention of the Court. If the owner of a ship fail to comply with the affirmative requirements of the U. S. Statute, such as the requirement for a sufficient crew made by Section 4463, it will be presumed in the case of dam-

ages arising to the passengers that the injury was caused by that failure. This has been the repeated holding of the Supreme Court in a very large number of cases. Of this rule the Court in *The Pennsylvania,* 19 Wallace, 136, has said, "When, as in this case, a ship at the time of collision is in actual violation of a statutory rule intended to prevent collisions, it is no more than a reasonable presumption that the fault, if not the sole cause, was a contributary cause of the disaster; in such a case the burden rests upon the ship of showing, not that her fault might not have been one of the causes or that it probably was not, but THAT IT COULD NOT HAVE BEEN. Such a rule is necessary to enforce obedience to the mandate of the Statute."

In *Richelieu Navigation Company* vs. *Boston Insurance Company,* 136 U. S., 415, 423, the Supreme Court sustains the following instruction: "As the *Spartan* was violating statute laws of Canada in running at full speed in a dense fog, the plaintiff must show affirmatively that neither the speed of the steamer nor the defects of the compass could have caused or have contributed to cause the stranding of the steamer. (p. 415.)"

In the *Guild Hall,* 58 Federal, 800, it was held that where a master was habitually drunk the burden was on the owner to show that the collision

COULD NOT HAVE BEEN AVOIDED even if a competent master had been supplied.

The same rule has been applied by our own Circuit Court of Appeals to a case arising under this Statute to limit liability. In the case of *The Annie Faxon,* 75 Federal, 319, the owners had applied for limitation of liability, which the heirs of the deceased contested on the ground that the boiler of the ship had not been inspected by the local inspector before being used, as required by Section 4418. Judge Gilbert said, "There is in the record, it is true, no distinct or positive evidence that the failure to inspect the boiler after the repairs was the cause of the explosion and that an inspection at that time would necessarily have disclosed the imperfections and weakness which resulted in the accident. * * * Probably it could never be proven in any given case of explosion that the accident occurred through a failure to inspect the boiler. There would be little or no protection in holding that after an explosion an injured passenger, in order to recover under 4493, must prove that, notwithstanding the absolute failure to comply with the inspection law, there were in the boiler defects that would necessarily have been detected if an inspection had been made before using the same. * * * The failure to comply with the inspection law may, in our judgment be invoked to prove that the owner is not entitled to the ben-

efit of the limitation of liability law as claimed in the libel and petition." (The excerpts from Judge Gilbert's opinion are from pages 319 and 320 of the Report.)

Now, the case of the Rio is, in its essential features, identical with that of *The Annie Faxon.* It appears that the Rio left the port of Honolulu with a crew consisting of 84 Chinamen, officered by white officers. It appears that none of these officers could speak Chinese and that none of the Chinese, with the exception of the boatswain and one fireman, could speak English. It appears that all the orders from the officers had to travel from the officers to the crew through the medium of these interpreters, or be communicated to the Chinese by gestures. It appears further that there was on board of the ship 11 life boats and that there were 211 persons to be taken off in those boats, making 19 persons per life boat, so that in any emergency which might arise in the voyage from Honolulu to San Francisco it would require the launching of all of the life boats to get off all of the passengers on the ship in an expeditious manner. It is quite true that the life boats would have held, if crowded, a larger number of persons than 19; perhaps they could have been crowded to have held 30 persons each; but it would have been impossible in any emergency requiring quick action to have lowered those 30 persons one by

one into the boats. It further appears that there never had been a single boat drill on this ship for the lowering of these boats for more than six months prior to the wreck. It further appears that but one of the two interpreters on board of the ship was conversant with the lowering of boats. Such was the condition of affairs on that dark morning when the ship struck the rock in the fog just outside of the port.

Now, this insufficiency of the crew was an organic one; the crew when it was shipped was organically imperfect. It may be asked, How was it possible to run the ship as far as they did with such a crew? and the answer is that the Chinaman is an excellent imitator, easily trained, and that he quickly learned through his interpreters how to do all the necessary things in the ordinary management of the ship. We do not for a moment desire to be placed in the position of condemning the Chinese race as sailors. We are not trying to defeat this limitation of liability on the ground merely that this crew was a Chinese crew. We are defending on the ground that THIS PARTICULAR CREW WAS NOT SUFFICIENT TO COPE WITH THE EMERGENCY in which the ship was placed, an emergency most likely to arise, and one against which the ship had made all proper preparations in the way of life-saving appliances; had provided everything except the crew

which was to make the appliances efficient. Now, the crew, when it left the port of Honolulu, did not comply with the requirements of Section 4463 of the R. S. If they had been trained between Honolulu and San Fracisco in the lowering of boats so that with their Chinese imitativeness they had been able to lower them under the direction of their fellow-Chinamen, without the command of their white officers, the organic insufficiency might have been remedied, but the evidence is absolutely conclusive that they had never been so trained. The insufficiency existing at the time of leaving the port, never having been remedied up to the time of the disaster, the owners come within the rule laid down in *The Annie Faxon* and must find themselves deprived of the right to limit their liability by their failure to comply with the U. S. Statute.

It would be sufficient for us to rest our argument at this point and to say that the burden resting on them as petitioners had not been sustained because, in the language of Judge Clifford, they have failed to show "that the fault *could not have been* one of the causes of the loss of life." Although we might rest here, we are able to go a step further than we are required to do and to show from the evidence that the captain was informed by the pilot as soon as the ship struck that they were going to sink; that he immediately gave the signal

to the boats, that it took twenty minutes for the ship to sink, that it took but five minutes for a properly trained crew to lower all the boats, two minutes some of the officers testified, and that at the end of the twenty minutes but three of the eleven boats had been put over the side of the ship; that two of them were swamped in a smooth sea; that the third, which was successfully launched, was launched by two of the white officers and that when it got away it had but three passengers and two white members of the crew, and no Chinamen. The evidence shows that in these twenty minutes, during which the ship sank on an even keel, with a list at no time greater than ten degrees, in a smooth sea, with boats perfectly equipped for the saving of the passengers, with all the bearings oiled, the blocks and tackle in perfect condition, but three passengers were taken from the ship in boats by the time she had gone down. The evidence shows that there was no confusion on the part of the passengers which in any way interfered with the lowering of the boats, and it further shows that the Chinamen as a matter of fact did come to many of the boats and make such futile attempts to lower them as they could. Every element that possibly could have contributed to the successful lowering of those boats and getting those passengers off existed, with the single exception of a crew that had been trained to handle the

appliances, and which could understand the commands of the officers in such an emergency.

We will show from the evidence the following facts:

1. That the members of the crew in the deck department (sailors), of the engineers' department, and of the fireroom, were Chinese who could not understand English, and that the officers could not speak Chinese, nor any language that the Chinese could understand, and that all the commands were either by gesture or through two interpreters.

2. That the men were so widely separated from their officers that the second officer in charge of the deck department did not know the names of any one of the sailors under his immediate command, and that a quartermaster could not name four out of the eighty-five Chinamen on the ship.

3. That there never had been a boat drill for the crew, that the boats in the chocks had not been lowered for many months, and that the only drill in the ship was fire drill, where the crew merely assembled by the boats and did not touch them.

4. That at the time of the sinking of the ship it was dark, that the ship sank on an even keel, and that the water was smooth.

5. That the apparatus for launching the boats was in perfect condition, and that there was no

panic on the part of the passengers to interfere with the crew.

6. That it would not have taken more than five minutes to lower these boats from the chocks; the majority of the officers estimating that it would have taken from two to four minutes.

7. That the signal to lower boats was given as soon as the ship struck.

8. That the ship was twenty minutes in sinking.

9. That the Chinese were known to have deserted at least one of the boats.

10. That but one boat was successfully launched, the starboard after-quarter boat, and that by the carpenter and Officer Coghlan personally, and with their own hands.

11. That but two other boats were gotten over the side of the ship, one of which was swamped in a smooth sea by the unpracticed handling of the falls by a Chinaman, and the other gotten off so tardily that it was swamped as the ship went down; and finally,

12. That but three passengers were taken from the ship in the life boats.

In support of our main proposition that the Chinese could not understand the language of their officers, and that there was no medium of commu-

nication between officers and men sufficient to cope with an emergency requiring the lowering of the boats, we offer the very highest testimony obtainable. On this point we have the depositions of nineteen of the survivors of the Chinese crew. Eight of these were members of the deck department, called on board the ship sailors, and half the total number in whose special charge were supposed to be the launching of the eleven lifeboats. The remainder are firemen and coal passers, each of whom had a necessary function to perform in the launching of the boats. Their testimony was interpreted by Soo Hoo Fong, the interpreter of the Pacific Mail Steamship Company, and John Conception, who acted for the claimant, Sarah Guyon. The witnesses were sequestered and examined separately, and there is not a material discrepancy in the entire nineteen depositions. These are the same Chinamen that we petitioned your Honor to have examined before yourself acting as Commissioner. We have since learned to our regret that this was perhaps an impropriety, though we feel an equal regret that your Honor did not see with your own eyes how hopeless a task it would have been to have attempted the launching of those eleven life boats on that dark morning with men who could not understand the simplest question concerning the ship, whether addressed in English or that pigeon Eng-

lish with which we of this coast are more or less familiar.

Not only is the Chinese testimony absolutely convincing in itself, but it is not contradicted by a single white officer of the "Rio." Second Officer Coghlan, the highest surviving officer of the ship; Third Officer Holland, the next in command; Engineer Herlihy and Quartermaster Lindstrom, all testified at length as to the condition of the vessel and crew, and not one of them denies these assertions of the Chinamen. In view of the fact that this was the very question at issue in the case, the exact ground set forth in our several answers for contesting the limitation of the company's liability, this silence of the company's own officers and witnesses, must be regarded as an admission that the Chinamen's testimony portrays accurately the condition of affairs on the ship on that dark morning when the whistle was blown to man the boats.

I.

The members of the crew of the deck department (sailors), of the engineer's department and of the fireroom, constituting all the crew, save the cabin boys, were Chinese who could not understand English. The officers could not speak Chinese nor any language that these Chinamen could understand. All the commands were either by gesture or through two interpreters.

FUNG PING (Deposition, p. 13).

Q. Were you employed on the Rio when she sank?
A. Yes, sir.
Q. What is your business? A. Sailor.
Q. Do you speak English? A. No, sir; I do not.
Q. Do you understand English? A. No, sir.
Q. How did you get your orders on the Rio?
A. The boatswain gave me the orders.
(p. 14.) Q. Do any of the rest of the sailors other than the boatswain speak English?
A. The boatswain is the only one who speaks English.
Q. Do you live with the sailors on board of the ship?
A. Yes, sir.
Q. Did you ever hear any one of them speak English? Other than the boatswain? A. No, sir.

LOW YOW (Deposition, p. 16).

Q. Do you understand English? A. I do not understand it.
Q. Do you understand pigeon-English? A. No, sir; I do not.
Q. Were you on the Rio when she sank? A. Yes, sir.
(p. 17.) Q. How do you get your orders on the ship?
A. The boatswain gives me the orders.
Q. DID YOU EVER TAKE ANY ORDERS DIRECTLY FROM THE WHITE PEOPLE SPOKEN IN ENGLISH?
A. HE HAS GOT TO DIRECT HIM BY HAND, BY SIGNS. BUT I COULD NOT UNDERSTAND WHAT THE WHITE OFFICER WOULD TELL ME. I GENERALLY GOT MY ORDERS FROM THE BOATSWAIN.

HOE SING (Deposition, p. 19).

Q. Do you understand English? A. No, sir.
Q. Were you employed on the Rio at the time she sank?

A. Yes, sir; I was on the Rio.
Q. What was your employment there? A. Sailor.
Q. How long had you been on the Rio?
A. Just from Hongkong here the last trip.
Q. Did the boatswain speak English? A. Yes, sir.
Q. Do the rest of the sailors speak English?
A. Only the boatswain, he is the only one who knows how to speak English; the rest don't know how to speak it.
Q. How do you get your orders on the ship?
A. The boatswain gives us our orders.
Q. Did you ever get any orders from the white officers?
A. The white officers never gave us any orders except through the boatswain.
(p. 21.) Mr. McALLISTER (through his own interpreter)—
Q. Did you not tell me that some of the crew could speak a little English?
A. These three men, the chief men—the boatswain and the firemen and the cook—they talk English, but those that are at work in the different departments, they understand a little.
Mr. DENMAN—Q. Can those who understand a little, understand IF THEY ARE NOT ASSISTED WITH GESTURES?
A. IT IS DONE BY GESTURES MORE THAN BY SPEECH.

WONG HEY (Deposition, p. 22).

(After asking questions in English.) Q. Do you understand English? A. I know a few words.
Q. Do you understand the words I asked you just now?
A. I knew about two words of what you said.
Q. Were you on the Rio when she sank? A. Yes, sir.
Q. How long had you been employed on the Rio?
A. Four months.
Q. As a sailor? A. Yes, sir; as a sailor.

CUM CHEE (Deposition, p. 26).

Q. Do you understand English? A. No, sir.
Q. How did you get your orders on the Rio?
A. The boatswain gave us the orders.
Q. Did the white officers ever give you any orders?
A. The white officers never gave us any orders.

YUNG SING (Deposition, p. 27).

Q. How many sailors are there on the Rio? A. Sixteen.
Q. And besides that the two boatswains?

A. Twenty-one altogether, counting the boatswain, the second boatswain, porter, the one that looks after the mess, and the one that looks after the latrines.
Q. How many of these can speak English?
A. None of them except the boatswain.

CHAU SING (Deposition, p. 28).

Q. Do you understand English? A. No, sir.
Q. What is your occupation? A. Sailor.
Q. Were you employed on the Rio at the time she sank?
A. Yes, sir. (p. 29.)
Q. Did the white officers ever give you any orders directly?
A. When the mate gives me orders, or any of the white officers I generally go and ask the boatswain what is the meaning of it.
Q. DID YOU EVER HEAR ANY WHITE OFFICER OF THE RIO, WHO WAS ON THE RIO WHEN SHE SANK, WHO COULD SPEAK CHINESE?
A. NO, SIR; NONE OF THEM COULD SPEAK CHINESE.

CHAN KIU (Deposition, p. 31).

Q. Do you understand English? A. No, sir.
Q. What is your occupation? A. Sailor.
Q. Were you on the Rio when she sank? A. Yes, sir.
Q. How many voyages have you made on the Rio?
A. Two voyages.
(p. 32.) Q. Did you ever hear any of the rest of them talk English? A. No, sir.
Q. Did you ever see any of the rest of them obey orders given in English?
A. They always got orders from the boatswain, never got them directly from the white officers.
Q. WHO ELSE ON THE SHIP COULD SPEAK BOTH ENGLISH AND CHINESE?
A. ONLY THE BOATSWAIN AND THE CHIEF OF THE FIREMEN COULD SPEAK ENGLISH AND CHINESE.

PUNG WAH (Deposition, p. 5).

Q. What is your employment?
A. SECOND BOATSWAIN.
Q. How long have you been employed on the Rio?
A. Two months on the Rio.
Q. How long have you been employed in the Pacific Mail Company? A. One year.

Q. Were you a sailor on the Rio at the time she sank?
A. Yes, sir.
Q. Do you understand, or can you speak the English language?
A. I know a few words, that is all.
Q. How did you get your orders on the ship?
A. The first boatswain.
Q. When in the duty of launching boats on the ship, did you get your orders from the chief boatswain?
A. Yes, sir; the chief boatswain tells us.
Q. Is that the only person?
A. Yes, sir; the chief boatswain tells me.
Q. Is he the only person who tells you?
A. Yes, sir; the chief boatswain is the only man who gives the orders.
Q. How many chief boatswains are there on the ship?
A. There are two boatswains on a ship.
Q. How many life boats are there on a ship? A. Eleven.
Q. How many in the deck department can speak English?
A. None of them.
Q. Do the chief boatswains speak English? A. Yes, sir.
Q. THEN WHEN YOU SAY NONE OF THE DECK DEPARTMENT SPEAK ENGLISH YOU MEAN OTHER THAN THE CHIEFS?
A. YES, SIR. THE CHIEF BOATSWAIN IS THE ONLY MAN.
Q. The chief boatswains. They are the only two?
A. Yes, sir.
Q. How many sailors are there in the deck department?
A. Fifteen with the two boatswains.
Q. On the Rio? A. Yes, sir.

Coal Passers and Firemen.

LEON PAK (Deposition, p. 4).

Q. Do you speak English? A. No, sir.
Q. Do you understand the English language? A. No, sir.
(p. 5.) Q. Who is the chief man of the coal passers?
A. Cock Ning is the name of the chief fireman.
Q. Can any one else besides the chief coal passer speak English?
A. Only the chief fireman knows English.
Q. Can any of them understand English besides the chief fireman?
A. They don't quite understand, but they just merely do some-

thing—the engineer sometimes tell them, and they just understand sometimes, and other times they do not.
Q. CAN THEY UNDERSTAND IF THE ENGINEER DOES NOT POINT OUT WITH A GESTURE?
A. NO, SIR; HE WILL HAVE TO POINT OUT THE DIFFERENT THINGS.

FOOK SING (Deposition, p. 41).

Q. What is your employment? A. Second fireman.
Q. Do you speak English?
A. I know only those things concerning the engine-room.
Q. Do you know anything concerning the lifeboats in English?
A. No, sir; I do not.
Q. Do you know anything concerning the life preservers in English? A. I do not.
(p. 42.) Q. DID YOU KNOW THE OTHER FIREMEN UPON THE RIO WHEN SHE SANK?
A. YES, SIR; I KNEW THEM ALL.
Q. DID THEY UNDERSTAND ENGLISH OTHER THAN THE CHIEF FIREMAN?
A. ONLY THE CHIEF FIREMAN.

There are seven more depositions of Chinamen, similar to the above.

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II.

The men were so widely separated from their officers tnat the second officer of the ship, in charge of the deck department, did not know the name of a single one of the sailors under his immediate command, and a quartermaster could not name four out of the 85 Chinamen on the ship.

SECOND OFFICER COGHLAN (p. 58).

Q. What are the names of the Chinamen who should have been at that boat? A. I do not remember that now.
Q. Give me the names of some of them in your department that should have been at those boats.
A. I could not give you the names of them, I do not know the names.

QUARTERMASTER LINDSTROM (p. 83).

Q. You say that you were quartermaster on this ship—for how many years did you say?
A. I was not quartermaster all of the time.
Q. How long were you on the ship? A. Twelve months.
Q. You could name only four of the Chinese crew by name?
A. I do not say I could name four by name, THEY CHANGE THEM ALL THE TIME; about eight of them were on the ship all the time I was on it.

III.

There never had been a boat drill for the crew. The six boats in the chocks had not even been moved for several months and the only drill on the ship was fire drill where the crew merely assembled by the boats and did not touch them.

THIRD OFFICER HOLLAND (p. 126).

"WE NEVER LIFTED THEM OUT OF THE CHOCKS AT FIRE DRILLS."

FUNG PING, Sailor (Deposition, p. 13).

Q. Did you ever see a boat drill on the Rio?
A. No, sir; I have not seen a boat drill. (Through Soo Hoo Fong, as interpreter.) On the deck but not in the water.
Mr. DENMAN—Q. What did he say about the deck?
Interpreter Conception—ALL THEY DO IS TO STAND BY THE BOATS, HE SAYS. You wanted to find out whether the boats were lowered.
Mr. DENMAN. Ask him if the boats are lowered.
A. No, sir.
Q. How long have you been on the Rio? A. Four months.
Q. DID YOU EVER SEE THE BOATS LOWERED WHILE YOU WERE ON THE RIO?
A. NO, SIR.

LOW YOU, Sailor (Deposition, p. 16).

Q. How long have you been employed on the Rio?
A. Four months.
Q. Did you ever see fire drill on the Rio in that time?
A. Yes, sir.
Q. Did you ever see boat drill on the Rio during that time?
A. I HAVE SEEN FIRE DRILLS AND I HAVE SEEN A KIND OF BOAT DRILL; WHEN THEY WERE THROUGH WITH THE FIRE DRILL, THEY ALL GO TO THE BOATS, WHAT THEY CALL GOING TO THE BOATS, BUT I HAVE NEVER SEEN THE BOATS LOWERED TO THE WATER.
Q. Have you ever seen the boats lifted out of the chocks so that they extended over the side of the ship?

A. Yes, sir; I have seen some of them.
Q. Were they the quarter-boats? A. Yes, sir.
Q. Was it ever done on the other boats?
A. It was the quarter-boats that were generally out and the other boats were never put out.

HOE SING, Sailor (Deposition, p. 19).

Q. Did you ever attend fire drill on the Rio? A. Yes, sir.
Q. Did you ever attend boat drill on the Rio? A. No, sir.
Q. Did you ever see any of the boats of the Rio lowered over the side of the ship other than the quarter-boats?
A. No, sir; I have never seen any of the boats lowered.

WONG HEY, Sailor (Deposition, p. 24).

Mr. DENMAN—Q. Did you ever see fire drill on board the Rio?
A. Yes, sir.
Q. Did you ever see boat drill on board the Rio?
A. I have never seen a boat drill.

CUM CHEE, Sailor (Deposition, p. 25).

Q. Did you ever see a boat drill on the Rio? A. No, sir.

YUNG SING, Sailor (Deposition, p. 27).

Q. Did you ever see a boat drill while you were on the Rio where all the boats were lowered?
A. I never saw one where all the boats were lowered.

CHOW SING, Sailor (Deposition, p. 28).

Q. Did you ever see a boat drill on the Rio? A. No, sir.
Q. How long have you been on the Rio?
A. About two trips.

PUNG WAH, Second Boatswain (Deposition, p. 9).

(Examined through Soo Hoo Fong, petitioner's interpreter.)
Mr. McALLISTER—Q. Did you ever have boat drill in Hongkong when you were lying in Hongkong? A. No, sir.
Q. Did you ever have a boat drill while you were on the Rio?
A. No, sir.

Q. What is a boat drill?
A. I KNOW WHAT IS THE LOWERING OF THE BOATS, BUT I HAVEN'T SEEN THAT ON THE RIO. I HAVE SEEN IT ON OTHER SHIPS.
Q. Never saw it on the Rio in Hongkong?
A. No, sir; I never saw it in Hongkong.
Q. Did you ever see any of those boats lowered into the water?
A. Yes, sir.
Q. When? A. On the Chinese coast.
Q. Boats of the Rio? A. No, sir.
Q. You say you saw them lowered on the Chinese coast. Were they boats of the Rio? A. Some other ships.
Q. THEN YOU HAVE NEVER SEEN THE LIFE BOATS OF THE RIO LOWERED INTO THE WATER?
A. YES, SIR; I SAW THE BOATS LOWERED DOWN.
Q. Where did you see them lowered down?
A. I saw them lowered down.
Q. WHEREABOUTS, AT HONGKONG, OR AT SEA, OR WHERE?
A. JUST LIKE HERE (showing) WHEN THE SHIP SANK.

FOOK SING, Second Fireman (Deposition, p. 43.)

(Examined through Soo Hoo Fong.)
Mr. McALLISTER—Q. Did you ever see a boat drill on the Rio?
Mr. DENMAN. The same objections.
A. I never saw no boat drill on the ship.
Mr. DENMAN. I withdraw all my objections.

There are nine other depositions of Chinamen, similar to the above.

IV.

At the time of the sinking of the ship it was very dark, that the ship sank on an even keel and that the water was smooth.

THIRD OFFICER CHARLES HOLLAND (p. 74).

Q. You do not know whether your own crew reported to its own boat; you cannot swear to that?
A. It was dark and I could not swear to that, I COULD NOT SEE IF IT WAS MY OWN CREW; IT WAS DARK.

SECOND OFFICER COGHLAN (p. 137).

Q. That is all you know about the conduct of the crew on that day?
A. Yes, sir; I went right down to the boat and came up again; IT WAS TOTAL DARKNESS.

PILOT JORDAN (p. 28).

Q. What was the condition of the sea at that time?
A. Smooth.
Q. Was there any perceptible list to the ship?
A. Down by the head, there was not any list.
Q. Not enough to interfere with the launching of the boats?
A. No, the ship was upright all the time.

CHIEF ENGINEER HERLIHY (p. 116).

Q. Was there any sea running?
A. No, sir; it was smooth.

V.

The apparatus for launching the boats was in perfect condition.

SECOND OFFICER COGHLAN (p. 61).

Q. You say that the equipment of the life boats was perfect?
A. Yes, sir.
Q. The blocks were oiled?
A. They were all in working order.
Q. Everything was in working order? A. Yes, sir.

VI.

It would not have taken more than five minutes to lower all the boats from the chocks; the estimates of the officers running from two to five minutes for getting the boats into the water after the signal to abandon the ship.

THIRD OFFICER HOLLAND (p. 126).

Q. Do you desire to swear to that as an expert that it will take five minutes for a well-drilled crew to do that?
A. Not more than that.
Q. Do you think it will take that much? A. No, sir.
Q. HOW LONG WOULD IT TAKE THE CREW?
A. YOU CAN DO IT IN TWO MINUTES.
Q. That is to say about two minutes after the blowing of the whistle?
A. We never lifted them out of the chocks at the fire drills.
Q. The men were there and could have lifted them out two minutes after the whistle was blown?
A. IT COULD HAVE BEEN DONE; YES.
Q. AND THAT IS WHAT WOULD HAVE BEEN DONE IF YOU HAD COMPLETED YOUR FIRE DRILL AND TURNED IT INTO A COMPLETE BOAT DRILL AND LOWERED THE BOATS?
A. YES, SIR.
(p. 128.) Mr. DENMAN. The deposition of Charles Holland on pages 7, 8 and 9 thereof, is here offered.
THE COURT. The portion just read to the witness?
Mr. DENMAN. The portion read to the witness, on pages 7, 8 and 9 thereof.

FRANK CRAMP, Carpenter (Deposition p. 40).

Q. Then you went to boat No. 10? A. Yes, sir.
Q. And you lowered her away? A. Yes, sir.
Q. How long did it take to lower her away?
A. Not a minute.
Q. That is what any of the boats could be lowered in?
A. No, sir; all the boats could not be lowered in that time, because some of the boats had to be lifted up and taken out of the chocks.
Q. How long would it take to lift them out of the chocks and swing them over the side?
A. THREE OR FOUR MINUTES TO SWING THEM OUT.
Q. What did you have to do to swing them out?
A. You would have to shove them out, swing one davit around, bring the other around, and put them over the sides.
Q. Was this Chinese crew well drilled?
A. As far as the drilling *went*, WE NEVER SWUNG THE BOATS OUT IN BOAT DRILLS.
Q. You have to lift the boat up, how far?
A. At least six inches.
Q. How long would it take to do that, half a minute?
A. Possibly a minute to get that boat up and the chocks out.
Q. Have you ever done this? No, sir; I have not.
Q. This is just your opinion?
A. Just my opinion that I am giving.

SECOND OFFICER COGHLAN (p. 50).

Q. Did you ever see any of those boats lifted from the chocks at any time within six months prior to the sinking of the Rio.
A. Yes, sir.
Q. You are certain of that?
A. I THINK I did.
Q. How long did it take to do it?
A. I do not know about that; I could not say; not a very long time at all, because the gear was all there. The boats were hooked on; they simply had to be lifted up at either end of them. It was only a matter of a few minutes' time.
Q. Just lifted the boats out of the chocks, pushed them out and dropped them down? A. That is all.
Q. How long would it take?
A. Five minutes to lift them up and drop them down.

VII.

The signal to lower the boats was given as soon as the ship struck.

PILOT JORDAN (p. 18).

Q. When she struck, Captain Jordan, did you think she was going to sink?
A. YES; I TOLD THE CAPTAIN SO.

SECOND OFFICER COGHLAN (p. 41).

Q. At that time the signals to go to the stations were given?
A. YES, SIR. CAPTAIN WARD GAVE THE SIGNALS AS SOON AS THE SHIP STRUCK.
Q. And then you went within two minutes to proceed to your station and you met the Chief Engineer?
A. It was not two minutes, it was just as fast as I could get down off the bridge. I only met him a few steps away from the bridge ladder.
(p. 48.)—Q. Was the signal for that drill the same signal given on the Rio at the time of the disaster? A. Yes, sir.

VIII.

The ship was twenty minutes in sinking.

PILOT JORDAN (p. 18).

Q. How long in your judgment was it after she struck that she sank?
A. I should judge about TWENTY MINUTES.

ENGINEER HERLIHY (p. 115).

(After three pages of description of routine duties with customary time for each duty.)
Q. In view of all these things that occurred, how long do you estimate it took the ship to sink?
A. I thought from all the time I was engaged and the time she struck it might BE TWENTY MINUTES, not more or less. It might be less. I have no means of knowing the time. I was not bothering about the time.
Q. You recollect all these things that occurred in their sequence?
A. Pretty near; yes.

MRS. KATE WEST (p. 120).

Q. Judging by all these things which you did, by the length of time it took you to get your clothes on originally, the conversation that you heard between the Wildmans, the conversation which you had with the China boy when he came out, the return and partial dressing, the conversation with Miss Ripley; your going to the Captain and to the rear of the boat and afterwards inside and on the deck below; the going of Miss Ripley to get your life preserver, and return; the conversation about putting on the life preserver and the attempt to do so, and the final going to the boat that you were saved in, how long would you say it was from the TIME THAT THE LIGHTS WENT OUT UNTIL THE SHIP WENT DOWN?
A. I could not tell, I did a good many things.
Q. About how long would you say?
A. I SHOULD SAY ABOUT FIFTEEN MINUTES.
(p. 17.)—Q. Pilot Jordan, after she struck, did the electric lights go out? A. In a few minutes, yes, sir.
Q. How many minutes do you think it was?
A. ABOUT FIVE MINUTES I suppose, or probably less than that.

R. H. LONG (p. 106).

Q. How long do you think it took you altogether from the time that the vessel struck till you came up on deck the second time, after having gone down and packed your clothes and come up again and gone down and got your life preserver, and then returned?

A. I should judge from twelve to fifteen minutes; that is what I would put it at from the time that I went and what I did. (After this Mr. Long heard the two conversations between First Officer Johnson and the Quartermaster, and himself and Harry Guyon.)

IX.

That the Chinese were known to have deserted at least one of the boats.

R. H. LONG (pp. 107 and 108).

Q. Who else was on deck when you came up the second time?
A. Just as I came up on deck—they met just as I came on deck —the First Officer, Mr. Johnson—I have learned his name since —then—and one of the quartermasters, I don't know his name.
Q. Did you hear any conversation between those two regarding the conduct of the ship and the management of her?
Mr. FOULDS—I object to that question. Evidence of that kind cannot be competent.
THE COURT—I will hear the evidence.

A. The two men met. One came out through the gangway coming across ship, and the other came up facing me. They met right close to where I was standing. The First Officer asked the Quartermaster, "WHY ARE YOU NOT AT YOUR POST?" The quartermaster answered, "MY CREW DESERTED ME." That is just the words he used. They were standing there jawing when the vessel went down. I don't know what else was said. They were just jawing about the condition of things when the vessel went down.

X.

That but one boat was successfully launched, to wit, the starboard after quarter boat, and that by the carpenter and Officer Coghlan, without the assistance of any Chinese.

SECOND OFFICER COGHLAN (p. 56).

Mr. DENMAN—Q. When you came to the aft quarter-boat No. 10, how many men were there?

A. I do not know that at the present time; I think there were three though, but I am not positive about it.

Q. Who lowered the boat?

A. I lowered one end of it.

Q. You as second officer of the ship lowered one end of it?

A. Yes, sir; and after it was lowered I went down in it.

Q. Who lowered the other end?

A. I could not say now; I do not remember who it was.

Q. Who was the officer regularly in charge of that boat?

A. The ship's carpenter.

Q. Why did you take from him the lowering of the boat?

A. Because he was in the boat.

Q. You assisted in lowering the boat from the deck of the ship?

A. Yes, sir.

Q. Did you have hold of one of the falls in order to lower?

A. Yes, sir.

Q. In order to lower the boat it was necessary for the carpenter and second officer of the ship to actually engage in the lowering of the boat?

A. WE DID IT.

Q. Why do you say that the crew all did their duty if you had to lower that boat yourself?

A. Well, I consider myself one of the crew of the ship.

XI.

That but two other boats were gotten over the side of the ship, one of which was swamped by the clumsiness of the Chinamen in handling the falls, and the other was gotten off so tardily that it was swamped as the ship went down.

DR. O'NEILL (p. 85).

Q. Doctor, I wish you would state to the Court in your own language what happened after she struck.

A. After the pilot came to me and asked me if I had a boat, I said, "Yes, PORT QUARTER BOAT No. 9." * * * He got into the boat and lowered it and let the aft end of it go down with a run.

Q. Were you under water then, Doctor? A. No, sir.

Q. Did you get your boat bailed out? A. After a fashion.

Q. Who were in the boat at the time you were saved, when you got away from the ship's side?

A. There were three men; that is a quartermaster and three sailors.

Q. Any passengers? A. NO, SIR.

QUARTERMASTER LINDSTROM (p. 84).

Mr. DENMAN—Q. This boat No. 9, that was lowered, did it fill with water? A. Yes, sir.

Q. Why was that?

A. Through the fall going down the run.

Q. Was the water entirely bailed out? A. Not entirely.

Q. How much water was in it?

A. About six inches of water when we brought her alongside the ship.

(p. 83.)—Q. In lowering that boat No. 9, what happened?

A. The after fall went down with a run.

Q. Who was handling that? A. A Chinaman.

Q. What was his name? A. I do not know.

PILOT JORDAN (p. 27).

Q. After the ship struck what boats did you assist in lowering?

A. I assisted in lowering the doctor's boat. The after boat on the port side.

(p. 28.)—Q. Was that boat successfully launched?
A. Yes, sir; that is it got in the water. She was partially filled, I think.
Q. You say this boat was not successfully launched?
A. It was partially filled with water.

THIRD OFFICER HOLLAND (p. 68).

Q. Which boat did you lower?
A. I lowered ONE OF THE QUARTER BOATS.
Q. Which side were you on?
A. ON THE STARBOARD SIDE.
Q. Did you get any passengers in your boat? A. Yes, sir.
Q. How many? A. Two.
Q. After you got away from the ship's side, were you able to pick up any more passengers?
A. I DID NOT GET AWAY FROM THE SHIP'S SIDE.
Q. What happened?
A. The mast or something fell over my boat and smashed it.
Q. WERE YOU ALL THROWN IN THE WATER?
A. YES, SIR.
(p. 141.)—Q. As far as your boat was concerned, there was only one party in the boat? A. When the ship sank.

XII.

That but three passengers were taken from the ship in boats.

We have seen that but three boats were launched, No. 9, on the port side, being the Doctor's quarter boat, and Nos. 10 and 8, on the starboard side, officered by the ship's carpenter and Third Mate Holland, respectively. Holland's boat, containing one passenger, we have seen was swamped as the ship went down; the Doctor's boat, half-filled with water, we have seen was not baled out until too late to take any passengers. It now remains to account for No. 10, the carpenter's boat, which we have shown (p. 49) was lowered by Second Officer Coghlan, who himself held the falls.

FIRST OFFICER COGHLAN (p. 140).

Q. You do not know who were in the boat that you launched yourself?
A. Three ladies were in that boat.
(p. 37.)—Q. Who were in that boat that picked you up?
A. At that time there was the carpenter in charge of the boat and the main deck watchman and the three ladies, and those are all that were in the boat at that time.

These three ladies constitute *all* the passengers that were saved from the ship in boats. All the other passengers who survived were picked up floating in the water.

Now, what happened in those twenty minutes after the steamer struck? The Captain sounded the signal to abandon the ship at once, the same signal that brought the men to the lifeboats at fire drill, when as we have been told the roll call of the boat's crew was had at each of the lifeboats and the crew was dismissed without touching them. Was roll called there in the fog and darkness? The two officers questioned tell us that they could not name a single one of the Chinamen there at the boats, so we may properly infer it was not. Common sense tells us that no time was so wasted, for the officers had too much to do. *They must teach the crew by gestures in the darkness how to lower those boats.* They must have at least one complete boat drill before the ship sank and they must begin in the drill at the very point they had always before left off.

Does your Honor for a moment believe that this was attempted throughout that ship? Did Chau Sing listen to the white officer's English command to haul at this rope and swing that davit and knock out this chock and then, as he tells us he usually did "when the mate gives me orders or any of the white officers," "go and ask the boatswain what is the meaning of it," and then return and execute the command? Did Low Yow, who "could not understand what the white officers would tell me," strain his eyes in the fog and darkness to see the

officer who "has got to direct him by hand, by signs"? Did Hoe Sing and his companions, "at work in the different departments, who understood a little by gesture more than by speech," and who never had had a boat drill, try to master that new accomplishment in those twenty minutes of heartrending gloom.

We know that some of the white officers did attempt to get the Chinamen to lower their boats from the chocks, but of these not one is left to tell the tale. A quartermaster stayed with his boat till, as he says, "his crew deserted him." We could hardly blame them, for what was the use of their remaining and listening to commands of which they could not know the meaning? The last known of First Officer Johnson was just as the water rose to the upper deck, when he was seen returning from the fore part of the ship, where his boat was resting in the chocks, followed by several Chinamen. That boat could not have been launched, for it had not been found at the time of the appraisement some months later.

A few officers did what might be expected of sane and resourceful Anglo-Saxons under such circumstances. They came together hurriedly and with their own hands successfully launched one boat. For them there was no time wasted in interpreting, no bungling of the unfamiliar ropes and swamping of boats in the smooth sea. The

white men actually accomplished something and their boat was the only one that took a passenger from the ship's side.

There is no need to dwell on the horror of that scene; to repeat Mr. Long's description of the terrible outcries he heard and the commotion he saw back at the stern, or Officer Coghlan's account of the Chinese passengers, who, finding no boats being launched forward, rushed to the stern of the ship; or try to dimly appreciate Captain Ward's agony when some five minutes before his ship sank he saw that his crew had failed him at the boats and cried out, "For God's sake, save the women!" Before such a tribunal, I say, there is no need to dwell on such considerations.

But how about the future? Are these horrors to be repeated year after year? If the Chinaman possesses all the sailorlike qualities the Pacific Mail Captains claim, it is inevitable that to him shall be intrusted the lives of the increasing thousands who will annually cross the Pacific Ocean. Will the decision in this case stand for the proposition that *any* crew made up from members of this virtuous nation of 300,000,000 people is sufficient at all times to man the ship? That because Chinamen *can* be made good sailors, *can* be taught commands in a foreign tongue, *can* be brought into that closeness of communion with their officers which will insure quick execution in an emergency, it will be

presumed that all these things *have* been done, even though every Chinaman swear to the contrary and no officer contradict him?

Or will this case—coming as it does at the beginning of a tremendous expansion of the commerce of the Pacific, and presenting a state of facts entirely new to maritime jurisprudence, but one which the careless, self-interest of transportation companies will, unless checked, raise here time and again in the future—set a high standard of diligence for those who make profit out of the carrying of human beings on the sea in ships?

Either way the decision goes this is bound to be a controlling case. We cannot but feel that its decision will spell protection for the passenger on the sea, rather than the ship owner in the home port.

As we have shown, the burden on the petitioner was to prove that his failure to supply a sufficient crew, as required by the United States Statute, COULD NOT POSSIBLY HAVE CONTRIBUTED TO THE LOSS OF LIFE. We submit that the petitioner has not even shown a probability that this did not contribute to the loss of life. The limitation of their liability should, therefore, be refused.

The Annie Faxon, 75 Federal, 319.
The Guild Hall, 58 Federal, 800.

Due service of the within is hereby admitted this

day of February, 1903.

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